IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1327 OF 1984
With
CROSS OBJECTION NO. 24 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MAHMAD REHMAN & ANR. - Appellant(s)
Versus
YUSUF ALLARAKHA PATNI & ANR. - Respondent(s)

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Appearance :
Shri B.C. Dave for Appellants.
Shri Gaurang H. Bhatt for Respondents.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/06/2007

ORAL JUDGMENT

The driver and the owner of Truck No. GTW 434 insured with respondent No.2, being aggrieved by the judgement and award

dated 10th August, 1982 passed by the learned Member, Motor Accident Claims Tribunal (Main), Junagadh in Motor Accident Claims Petition No.195 of 1981, are before this Court, submitting, *inter alia*, that the award suffers with the vice of excessiveness, while the original claimant - respondent No.1 has filed his Cross Objections submitting, *inter alia*, that the award is on the lower side and it should be enhanced to the extent of Rs.1 lakh, as was claimed by the original claimant/respondent No.1.

2. The short facts necessary for disposal of the present appeal are that on 8th December, 1980, the claimant, Yusuf Allarakha Patni, was going in a rickshaw bearing No. GTW 3140 in discharge of his duties. At about 12:00 noon, when the rickshaw reached near Choksi Farm, from the opposite side, a truck bearing No. GTW-434, driven by Mahmad Rehman rashly and negligently, dashed against the rickshaw, as a result of which, the claimant was thrown overboard and he received serious injuries. The injuries were suffered on head, nose, jaw and other parts of the body. As the rickshaw also sustained certain damages, the owner of the rickshaw, namely, Rajak A. Rehman Patni, filed Motor Accident Claims Petition No.104 of 1981 and claimed compensation of Rs.9,999/-. Both the cases were consolidated and Motor Accident Claims Petition No.194 of 1981 filed by Patni Yusuf Allarakha was treated as the main petition.

2.1 The driver and the owner had filed their joint reply and denied their total liability. It is stated that the rickshaw driver was negligent and there was no fault on the part of the driver of the truck. After recording the evidence and hearing the parties, the learned Tribunal allowed Motor Accident Claims Petition No.104 of 1981 *in toto,* while awarded a sum of Rs.62,000/- to Patni Yusuf Allarakha in Motor Accident Claims Petition No.195 of 1981.

3. Shri Dave, learned Counsel for the appellants, after taking me through the records, submitted that the learned Tribunal below was not justified in recording the findings against the interest of the driver and the owner of the truck. It was also submitted that the award for Rs.62,000/- was on the higher side.

4. At the same time, Shri Gaurang Bhatt, learned Counsel for the respondent-claimant, after taking me through the medical report of the original claimant, Patni Yusuf Allarakha, submitted that he suffered permanent partial disablement, permanent disfigurement and he will have to suffer the resultant impact of the injury forever. He submitted that the learned Tribunal below was absolutely unjustified in making the deductions in the claim and further erred in not awarding under the head of pain, shock and sufferings.

5. From the evidence available on the record and the findings recorded by the learned Tribunal below, it would clearly appear that the truck was driven rashly and negligently and the claimants could successfully prove that the total fault was on the side of the driver of the truck. It is also to be seen from the records that the rickshaw was on the western side of the road, which was on its left, while the oncoming truck crossed the entire width of the road and dashed the auto rickshaw. From the *panchnama* and the *panch* witnesses examined in the case, it would clearly appear that the truck had left the main road and its course, and hit the rickshaw. The truck, which should have been on the western side of the road, according to the *panchnama*, was found on the eastern side of the road, which would show that it came to the wrong side and knocked the rickshaw. Once it is held that the driver of the truck was rash and negligent, then, there is no escape for the owner and the driver and he would certainly vicariously liable for the acts and actions of the driver of the truck.

6. It is to be seen that in the original claim petition, a sum of Rs.70,000/- was claimed as compensation under different heads, but, with the introduction of the amendment, the amount of claim was enhanced to the tune of Rs.1 lakh. The claimant had claimed for six months' salary at Rs.2,700/-, medical expenses and charges for the

attendant, etc. for Rs.10,000/-, a sum of Rs.25,000/- under the head of pain, shock and suffering, a sum of Rs.10,000/- towards loss of the amenities of the life and a sum of Rs.52,300/- towards future loss. The learned Tribunal below, instead of awarding Rs.2,700/- for six months' salary, awarded a sum of Rs.5,400/-. Out of the claim of Rs.10,000/- under the head of medical expenses and attendant charges, the learned Tribunal awarded a sum of Rs.7,500/-; against the claim of future enjoyment and expectation/amenities of life, instead of awarding a sum of Rs.10,000/-, the learned Tribunal awarded a sum of Rs.27,500/-, but, did not make any award under the head of pain, shock and sufferings. After assessing the income at Rs.450/- per month and finding that the working ability was reduced to 25%, the learned Tribunal allowed Rs.120/- per month towards the future loss and applied the multiplier of fifteen and thereafter, awarded a sum of Rs.21,500/- towards future economical loss.

7. According to Shri Gaurang Bhatt, nothing has been awarded towards pain, shock and sufferings, therefore, this Court should award the said sum of Rs.25,000/- under the said head. On being asked that if the appellants had claimed a sum of Rs.10,000/- only for future expectation, enjoyment and amenities of life, then, how could the Court award a sum of Rs.27,500/-, Shri Bhatt was absolutely inarticulate. In fact, from the discussion made in paragraph 25 of the judgement, it

would appear that the learned Tribunal, being conscious to the facts of the case, had jointly awarded a sum of Rs.27,500/- towards pain, shock and sufferings and future expectation, enjoyment and amenities of life.

8. In the opinion of this Court, the learned Tribunal below had rightly appreciated the income and was not unjustified in holding that the income of the injured was Rs.450/- per month. The learned Tribunal was also right in holding that the future loss of income would only be to the extent of 25% and the claimant would be entitled to a sum of Rs.21,500/-. The other awards made in favour of the claimant are also based on proper appreciation of the evidence available on record.

9. For the reasons given in the order passed by the learned Tribunal below and for the reasons given aforesaid, I am unable to hold that there is any cause for making any interference in the judgement and award made by the learned Court below. The appeal and the cross objections are consequently dismissed. No costs.

[R.S.Garg, J.]

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